In the High Court of M.P. Jabalpur.

Cri. Appeal No. 152/93 (D)

CF0000058632

Appellant :→ Habib Khan S/o Ajim Khan,
30 years, R/o Bijma, P.S.
Tamamar, Distt - Raigarh (M.P.)

BIBHUTI PRASAD

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Versus

Division Bench (Criminal)

Non-appelant :→ State of Madhya Pradesh

Cri. appeal Under Section 303 of Cr. P.C.

XI-HC-22

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मामला क्रमांक Criminal Appeal No. 152/93 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Division Bench :
Hon'ble Shri Justice L.C. Bhadoo, J &
Hon'ble Shri Justice V.K Shrivastava, J.

29/11/2005

Shri S.K. Chandel, counsel for the appellant.

Shri Ravindra Agrawal, Panel lawyer for the State.

ORAL JUDGMENT

By this appeal the accused/appellant - Habib Khan has questioned the legality of the judgment of conviction and sentence dated 15/12/1992 passed by the IInd Additional Sessions Judge, Raigarh in Sessions Trial No. 41/92 by which the learned IInd Additional Sessions Judge after holding the accused/appellant guilty for commission of the offence under Sections 302 and 404 of the Indian Penal Code, convicted and sentenced him to undergo imprisonment for life and rigorous imprisonment for one year respectively. Both the sentences were directed to run concurrently.

2) The prosecution case, in brief, is that Eshwar Gupta (PW/1) gave merg intimation (Ex/P/26) to the SHO Police Station,

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Tamnar on 06/11/1991 at about 20.05 hours to the effect that today in the morning at about 9.00 a.m. his grand-mother Shankara Bai went to the agricultural field and she did not return during the day, he went in search of her and he saw that his grand-mother was lying in the agriculture field of Arjun Kaleta. When he went near the body, he saw that Shankara Bai was lying dead and blood was coming out from her mouth. On receiving this report, Dehati Nalshi (Ex.P/25) was recorded by M.S. Chouhan, SHO, Police Station, Tamnar, Camp at Bijna and based on that first information report (Ex.P/23) was registered. PW/14 – M.S. Chouhan, SHO, Police Station, Tamnar took up the investigation. On 07/11/1991 after giving notice, he prepared Panchnama of the dead body of Shankara Bai (Ex.P/2). He took into possession the broken pieces of glass bangles of red colour and one basket under Ex.P/4 from the place of occurrence. He also took into possession one silver box from the place of occurrence under Ex.P/5. He also took into possession the blood stained soil and plain soil under Ex.P/6 and recorded the statements of witnesses. On 16/11/1991 in the police custody the accused/appellant – Habib Khan gave

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information (Ex.P/7) under Section 27 of the Evidence Act in the presence of the witnesses and in pursuance of that he got recovered one silver ornament (Karat) worn by ladies on their waist and the same was got identified by PW/5- Bhagwati Bai, daughter-in-law of the deceased Shankara Bai and memorandum of identification (Ex.P/3) was reduced in writing. After completion of the investigation charge sheet was filed against the present accused/appellant. However, the co-accused Nawab Khan could not be arrested and he remained absconded. Charge sheet was filed against the accused/appellant in the Court of Judicial Magistrate First Class, Gharghoda, who in turn committed the case to the Court of Sessions Judge, Raigarh, from where the learned IInd Additional Sessions Judge, Raigarh, received the case on transfer for trial. Learned Additional Sessions Judge, Raigarh, after perusing the records, was of the opinion that prima facie, offences under Sections 302 and 392 of the I.P.C., were made out against the accused/appellant, therefore, charges were framed. Accused/appellant abjured the charges and pleaded innocence.

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3) In order to prove the charges against the accused/appellant prosecution examined as many as 14 witnesses. On the other hand, statement of the accused/appellant was recorded by the learned Additional Sessions Judge under Section 313 of the Cr.P.C., in which he denied the prosecution evidence appearing against him and pleaded that he is innocent and he has been falsely implicated in the case by Jailal due to old animosity. Accused/appellant examined one witness namely Jafulla Khan (DW/1) as defence.

4) The learned Additional Sessions Judge, after hearing the arguments of learned Additional Public Prosecutor and the learned counsel for the accused/appellant, convicted and sentenced the accused/appellant in the manner mentioned in the earlier part of this judgment.

5) We have heard learned counsel for the accused/appellant and the Panel Lawyer for the State, perused

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the judgment of the trial Court and the evidence available on record.

6) Learned counsel for the accused/appellant did not dispute the fact of homicidal nature of death of deceased Shankara Bai. Apart from that, PW/9 – Doctor A.G. Shiek has stated that on 07/11/1991 he was working as Assistant Surgeon in the Primary Health Centre, Tamnar and on that day he conducted the post mortem on the dead body of Shankara Bai. He noticed that both ears were lacerated from the place where ear rings are worn and there were 12 abrasions on the neck caused by nail. There were two abrasions on right side of the neck and there was a bruise on the right side of the chest in the size of ½" x ½" and clotted blood was present in the throat and wind pipe. 2nd, 3rd, 4th, 5th and 6th ribs of right side and 2nd, 3rd, 4th and 5th ribs of left side were fractured. He gave opinion that all wounds are ante mortem wounds and punctured wounds of both lungs were fatal in nature and cause of death was Syncope on account of hemorrhagic shock. The nature of death was homicidal. He

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prepared the report (Ex.P/12). In view of the evidence of PW/9 - Doctor A.G. Shiek, it is established that the death of Shankara Bai was homicidal in nature.

7) Now coming to the question of involvement of the accused/appellant in committing the murder of Shankara Bai is concerned, Shri S.K. Chandel, learned counsel for the accused/appellant argued that the evidence of PW/2- Jailal does not inspire confidence for the reason that Mr. Jailal did not disclose the fact of witnessing the crime that he saw the accused/appellant was pressing the neck along with co-accused Nawab Khan to Eshwar Prasad (PW/1) and the versions of eye-witnesses are not supported by the medical evidence and the silver ornament was recovered from the open place, therefore, accused/appellant cannot be connected with the crime on account of recovery of silver ornament.

8) On the other hand, learned Panel Lawyer for the respondent/State supported the judgment of the trial Court.

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9) Having heard learned counsel for the parties, we have scanned the prosecution evidence. PW/2- Jailal has been introduced as eye-witness to the incident who has stated that on the fateful day after working in the agriculture field he returned to his house at about 12.00 noon and after taking meals he went towards Marghatia Tank to attend the call of the nature. When he was in the agriculture field of Mannu, he saw that Nawab Khan and Habib Khan were pressing the neck and waist of Shankara Bai and he was able to identify them. On saying this, he was frightened and ran away from the scene of occurrence. The villagers were also frightened on account of activities of Nawab Khan and Habib Khan as they always involved in the Marpit and theft. Next day he disclosed this fact to Anantram Patel. As he was frightened after seeing the incident, he came directly to his house and went for sleep. In cross-examination he has stated that he had not disclosed this fact to Eshwar Prasad (PW/1). Anantram Patel has been examined as witness (PW/4) who has stated that on Thursday at about 7.00 p.m., Jailal (PW/2) disclosed him that he had witnessed that Habib Khan and Nawab

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Khan were pressing the neck of Shankara Bai in the agriculture field of Arjun Katela. Kirtiram also informed him that PW-3 Jitku had witnessed the accused persons running away. In the cross examination he has stated that when PW/2 – Jailal disclosed this fact to him, no third person was present and Jailal informed him that the incident was about 1.30 p.m. PW-3 Jitku has stated that on 6/11/1991 he was grazing cattle in the field and at that time he saw Habib Khan and Nawab Khan running away through the agriculture field of Arjun Katela and next day he saw the dead body of Shankara Bai in the agriculture field of Arjun Katela.

10) The fair scrutiny of the evidence of these three witnesses shows that PW/2- Jailal witnessed the incident because his evidence stands corroborated by the evidence of PW/4 – Anantram Patel who has stated that on the next day morning PW/2- Jailal disclosed him that he saw the accused pressing the neck of Shankara Bai. The evidence of PW/2 - Jailal is further corroborated by the evidence of PW/3 – Jitku, who has stated that on the fateful day he saw the accused persons running through the agriculture field of Arjun Katela, the place of occurrence.

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Therefore, in view of the above evidence, much importance cannot be attached to the arguments advanced by learned counsel for the accused/appellant. In the first instance, the witness PW/2 – Jailal has stated that he was frightened, therefore, he went to his house and on account of nefarious activities of the accused Habib Khan and co-accused – Nawab Khan the villagers were frightened. The next day this witness disclosed the witnessing the incident to Anantram Patel and it has been proved by Anant Ram as PW/4. In the cross examination of Jailal, nothing has been brought to show that this witness has deposed against the accused/appellant on account of old animosity or any other reason. The evidence of Jailal also stands corroborated by the evidence of PW/3 – Jitku, who saw the accused persons running away from the agriculture field of Arjun Katela. The evidence of PW/2 Jailal is also corroborated by the medical evidence. PW/9 Doctor A.G. Shiek has categorically stated that there were twelve abrasions on the neck of Shankara Bai caused by nail and there were two other abrasions on the right side of the neck and both the ears of Shankara Bai were lacerated from the place where ear rings worn

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by ladies. Therefore, the injuries which were found on the body of Shankara Bai tally with the evidence of PW/2 Jailal, who has stated that he saw the accused persons Habib Khan and Nawab Khan pressing the neck of Shankara Bai.

11) The evidence of PW/2- Jailal is further corroborated by recovery of the Silver Karat of deceased Shankara Bai at the instance of the accused/appellant Habib Khan. PW/6 – Mittu has stated that the accused gave memorandum Ex.P/7) to Police in his presence regarding the concealment of the silver ornament and he has further stated that in pursuance of that information accused got recovered silver ornament and the same was taken into possession under Ex.P/8 and that silver ornament is article (B) which was recovered at the instance of the accused. PW/14 - M.S. Chouhan, Investigating Officer who recorded the memorandum (Ex.P/7) and recovered the silver ornament in pursuance thereof at the instance of the accused under Ex.P/8 has also proved these documents. PW/14 – M.S. Chouhan has categorically stated that the accused gave information that the

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silver ornament has been concealed in the agriculture field of Arjun Katela near the Marghatia Tank and the same was recovered in pursuance of that at the instance of the accused from the agriculture field of Arjun Katela near the Marghatia Tank.

12) It is true that the silver ornament was recovered from the agriculture field of Arjun Katela, but it has been stated by the Investigating Officer - M.S. Chouhan (PW/14) that the same was concealed in the agriculture field and it was recovered at the instance of the accused. It is not a case that the silver ornament was lying in the open place and the same was taken into possession. Therefore, there is no merit in the arguments of learned counsel for the accused/appellant that the said ornament was recovered from the open place. The said silver ornament was of deceased Shankara Bai. The same has been identified by PW/5 – Bhagwati Bai, daughter-in-law of deceased Shankar Bai who has stated that the silver ornament is of her mother-in-law and the same was identified by her under Annexure P/3 and that bears her signature under "B to B".

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13) Therefore, the evidence of eye witness PW/2 Jailal – witnessing the crime in question, the evidence of PW/3 -Jitku who saw the accused running from the agriculture field of Arjun Katela at the time of incident and the medical evidence and the post mortem report which have been proved by PW/9 – Doctor A.G. Shiek and the recovery of silver ornament at the instance of the accused/appellant establishes that the accused/appellant along with co-accused were the author of the heinous crime and in order to snatch the silver ornament from Shankar Bai the accused was involved in the criminal activity and caused injuries which were fatal to the life of Shankar Bai. Therefore, prosecution has been able to establish the offence under Section 302 of the IPC against the accused/appellant beyond reasonable doubt and the finding to this effect recorded by the trial Court based on legal evidence and the same cannot be interfered by this Court. Therefore, the trial Court has rightly held guilty accused/appellant – Habib Khan for commission of the offence under Section 302 of the I.P.C. and sentenced him correctly.

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14) As far as offence under Section 404 of the I.P.C., is concerned, the reasoning given by the trial Court in para 27 of the judgment based on surmises and conjectures, it is not a case where the accused took away the silver ornament from the body of Shankara Bai and mis-appropriated the same. This finding of the trial Court is contrary to the evidence of PW/2 Jailal who has clearly stated that the accused was involved in the physical violence and pressed the neck of Shankara Bai, therefore, the offence under Section 404 of the I.P.C., was not made out against the accused/appellant. However, since the accused/appellant has already been held guilty for committing the offence under Section 302 of the I.P.C., we do not want to go further.

15) In the result, as far as conviction and sentence awarded under Section 302 of the I.P.C., are maintained. However, the conviction awarded under Section 404 of the I.P.C., and sentence awarded under that section are set aside.

16) The appeal is disposed of.

Sd/-
L.C. Bhadoo
Judge

Sd/-
V.K. Shrivatava
Judge

Raju

6.12.05
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